

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

V.

**ALAN TODD MAY and
PROSPER OIL & GAS, INC. a/k/a
PROSPER ENERGY, INC.**

Defendants.

§ 100.10

Civil Action
No.: 3:10-CV-0425-L

AMENDED DECLARATION OF TY MARTINEZ

I, Ty Martinez, do hereby declare under penalty of perjury, in accordance with 28 U.S.C. § 1746, that the following is true and correct, and that I am competent to testify to the matters stated herein.

1. I am currently employed as an Enforcement Staff Accountant with the United States Securities and Exchange Commission (the “Commission”) in its Fort Worth Regional Office in Fort Worth, Texas. In connection with my duties, I have investigated the defendants named in the above-captioned lawsuit – Prosper Oil and Gas, Inc. a/k/a Prosper Energy, Inc. (“Prosper”) and Alan Todd May (“May”).

2. The Commission filed its complaint against May and Prosper on March 2, 2010. In support of the allegations in the complaint, I executed a Declaration that among other things provided an analysis of six bank accounts affiliated with Prosper and May. The analysis covered the period from inception of the accounts through December 2009.

3. On March 10, 2010, I learned that the funds Prosper receives from Fortis Capital Corp. / Texon, L.P. are oil-and-gas revenues. Since the Commission filed its complaint, I have also learned the nature of other previously unknown receipts and disbursements. I have prepared an amended bank activity summary for the six Prosper and May accounts for which I provided analysis in support of the allegations in the Commission's complaint. Attached as **Exhibit 1** is a true and complete copy of the amended bank activity summary. It covers the period November 2008 through December 2009

4. The following is a summary of the net changes in the sources and uses of the funds in Prosper's bank accounts:

- a. investor funds received decreased from approximately \$6.2 million to \$6 million;
- b. oil-and-gas revenues received increased from approximately \$107,000 to \$365,000;
- c. unknown deposits increased from approximately \$101,000 to \$105,000;
- d. oil-and-gas related expenditures increased from approximately \$996,000 to \$1 million; and
- e. investor payments increased from approximately \$840,000 to \$887,000.

5. On March 5, 2010, I received January and February 2010 bank records related to Prosper's bank account, number XXX-5800, at Peoples State Bank ("Peoples Account"). Based on my interviews of Prosper employees, the Peoples Account was the primary account being used by Prosper in January and February 2010.

6. Attached as **Exhibit 2** is a true and complete copy of my analysis of the additional two months of bank records from the Peoples Account. Based on the new bank records, I have

supplemented my analysis of Prosper's bank transactions with transaction history for the period from January 1 through February 28, 2010 as follows.

7. I identified approximately \$933,000.00 in deposits to, and \$1 million in withdrawals from, the Peoples Account. Of the deposits, I believe \$678,000.00 came from investors, \$75,021 came from oil-and-gas revenues, approximately \$70,000.00 was transferred from another Prosper bank account (and that account was closed), and \$110,000 was transferred from May or an associate of May. As of February 28, 2010, the People's Account had a negative balance of \$(572.84).

5. The Peoples Account took in only \$75,021 in royalty revenue, but Prosper disbursed \$329,000.00 in payments to investors from the account. This brings the total royalty revenue that Prosper received to \$440,000, and the total amount in investor distributions by Prosper to \$1,216,000. The only source of funds available to Prosper to make up the difference between the royalty revenue Prosper took in and the investor distribution Prosper paid out were funds from other investors.

8. Apart from making the \$329,000 in payments to investors during the period January through February 2010, Prosper spent the remaining funds in the Peoples Account as follows:

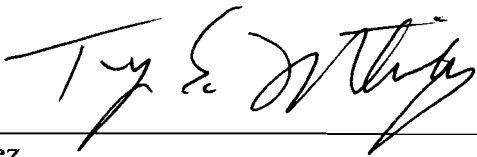
- a. approximately \$245,000.00 on oil-and-gas-related expenses or acquisitions;
- b. approximately \$58,000.00 in transfers to accounts in May's name;
- c. approximately \$135,000 in payroll expenditures and or payments to associates of May;
- d. approximately \$16,000.00 on a car or automotive expenses;
- d. approximately \$34,000.00 in personal or business credit card payments;

f. approximately \$15,000.00 in payments for travel, entertainment, meals and retail purchases;

g. approximately \$25,000.00 on office expenses, including rent and telephone expenses; and

i. approximately \$147,000.00 in miscellaneous expenditures or disbursements that I could not classify based on available information.

Executed on Thursday, March 11, 2010 in Fort Worth, Texas.



Ty Martinez

Prosper Oil and Gas, Inc. and Alan T. May
Amended Bank Activity Summary
November 2008 - December 2009

BEG. BALANCES	\$ -
SOURCES OF FUNDS:	
Investor Funds	\$ 6,020,487.09
Transfers from Other Alan T. May Bank or Brokerage Accounts	253,380.81
Probable Oil & Gas Revenues	365,809.64
Transfers from Other Prosper Oil & Gas Accounts	104,608.14
Unknown	105,440.38
IRS Refunds	17,430.44
Miscellaneous	10,146.01
Total Sources of Funds	\$ 6,877,302.51
USES OF FUNDS:	
Oil & Gas Expenditures / Acquisitions	\$ 1,000,308.30
Investor Royalty Payments / Distributions	887,535.55
Payroll and Insurance	800,408.41
Unknown Expenditures	672,988.52
Payments to May or Accounts Controlled by May	611,687.55
Vehicle Purchases or Related Expenditures	611,255.43
Meals, Entertainment and Retail Expenditures	443,031.05
Credit Card Payments	415,409.68
Travel Expenses	210,744.06
Payments to Consulting Firm	156,655.14
Payments to Child(ren) or Relatives and Former Spouse	113,215.46
Office Expenses	95,640.80
Rent, Utilities and Telephone	94,307.86
Cash Withdrawals	89,267.69
Purchase of Certificates of Deposits	85,000.00
Title Company Disbursements	60,419.85
Private Airplane Expenses and Lessons	36,749.99
Advertising and Legal Expenses	23,792.12
Miscellaneous	23,767.34
Transfer to Prosper Oil & Gas, Inc. Bank Accounts Not Included in Analysis	21,250.00
Charitable Contributions	20,000.00
Dental Expenses	15,205.00
Bank Fees	12,767.94
Payments to Bonham & May, LLC	11,491.95
Total Use of Funds	\$ 6,512,899.69
Net Source and Use of Funds	\$ 364,402.82
Net Intra-account Transfer and Unaccounted For Difference (Note 1)	(145,210.00)
Net Consolidated Cash Balance (December 2009)	\$ 219,192.82



Note 1: Approximately \$121,500 of the difference is due to intra-account transfers made between accounts, but not reflected on account statements because of different statement closing dates.

APP05

SEC v. Alan Todd May and Prosper Oil and Gas, Inc. a/k/a Prosper Energy, Inc.
Peoples State Bank Account Summary
January 1 - February 28, 2010

Beginning Balance on 1/1/2010 **\$ 79,109.05**

SOURCES OF FUNDS:

Investor Funds	\$ 678,188.23
Transfers from Alan T. May Bank Accounts	85,000.00
Transfer from Closed Prosper Oil & Gas Account	70,031.02
Alan May Associate	25,000.00
Oil & Gas Revenues	75,021.34
Unknown	0.25

Total Sources of Funds **\$ 933,240.84**

USES OF FUNDS:

Investor Royalty Payments / Distributions	\$ 329,620.09
Oil & Gas Expenditures / Acquisitions	245,619.80
Unknown Expenditures	143,207.55
Payroll and Insurance	134,948.02
Payments to May or Accounts Controlled by May	58,320.78
Credit Card Payments	34,850.80
Vehicle Purchases or Related Expenditures	21,082.79
Rent, Utilities and Telephone	18,895.60
Meals, Entertainment and Retail Expenditures	10,525.48
Office Expenses	6,803.92
Travel Expenses	4,557.70
Advertising and Legal Expenses	1,360.22
Miscellaneous	1,288.48
Bank Fees	1,082.50
Cash Withdrawals	759.00

Total Funds Used **\$ 1,012,922.73**

Ending Cash Balance on 2/28/2010 **\$ (572.84)**

